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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,373	06/23/2003	Michael T. Miller	MD 110/01	7980

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EXAMINER

FISCHMANN, BRYAN R

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 03/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/601,373	Applicant(s) MILLER, MICHAEL T.	
	Examiner Bryan Fischmann	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 5 is/are allowed.
- 6) ☒ Claim(s) 2-4 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Acknowledgments

1. The Amendment filed 12-13-2004 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-4 and 6 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant regards as his invention.

A) Claim 2 recites the limitation "the resting orientation". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 2 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Ramsey, US Patent 6,560,791.

Ramsey teaches an equipment transportation system comprising, in combination:

a frame (Figure 1) fabricated of a rigid material and having a plurality of cross members ("sideways" portion of 30 and 32) and a plurality of wheels (22) with an axis, the frame having a cooler (Figure 1) mounted thereto, the frame having a handle (23) parallel with and positioned above the axis of the wheels when in a resting orientation (Figure 1).

Regarding claim 3, the "cutting board" is reference number 122 and the "holster" is reference number 40.

6. Claims 2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Helm, US Patent 5,641,170.

Helm teaches an equipment transportation system comprising, in combination:

a frame (Figure 1) fabricated of a rigid material and having a plurality of cross members (38, 40 and 42) and a plurality of wheels (Figure 2) with an axis ("transverse"

horizontal axis through wheel centerline), the frame having a cooler (10) mounted thereto, the frame having a handle (Figure 2) parallel with and positioned above the axis of the wheels when in a resting orientation (Figure 2).

Regarding the recitation of “cooler” in claim 2, it is noted this limitation is drawn toward “intended use” of the claimed invention. The functional recitation of intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the function or intended use, then it meets the claim. *In re Casey*, 370 F.2d 576, 152 USPQ 235, 238 (CCPA 1967). It is the Examiner’s position that the prior art is capable of performing the intended use, as reference number 10 can be filled with ice so that it will serve as a “cooler”.

Once this prima facie case has been established, the burden shifts to the applicant to show that the prior art structure does not possess the functionally defined or intended use limitations of his claimed apparatus. *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

Note also that “an axis” may alternatively be chosen as a horizontal axis through a wheel in a fore-and-aft direction, which is “parallel” to the “fore-and-aft handle” in Figure 10. Note that the claim 2 recitation “...a plurality of wheels with an axis...” does not necessarily require that the “axis” pass through all of the plurality of wheels, as a plurality of wheels may have an infinite number of axes.

Regarding claim 4, the "storage compartment" is reference number 70. Note that the lower back side of reference number 70 has an "angled configuration".

7. Claims 2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller, US Patent 5,203,815.

Miller teaches an equipment transportation system comprising, in combination:
a frame (Figure 1) fabricated of a rigid material and having a plurality of cross members (Figure 4) and a plurality of wheels (Figure 2) with an axis, the frame having a cooler (12a) mounted thereto, the frame having a handle (20) parallel with and positioned above the axis of the wheels when in a resting orientation (Figure 1).

Regarding claim 6, the "forwardly projecting flat load-carrying portion" is reference number 30a and the tackle box is reference number 12b.

Allowable Subject Matter

8. Claims 1 and 5 are allowed.

Examiner's Comments

9. The amendment filed 12-13-2004 has overcome the specification, drawing and claim objections set forth in the last Office Action dated 09-14-2004.

10. The amendment to claim 2 to set forth that the handle is parallel with a "wheel axis" is not considered to overcome the previously cited prior art for reasons set forth in this Office Action. This is in contrast to Applicant's remarks on page 8 of the amendment which sets forth that the additional limitations set forth in claim 2 that the

handle is parallel with and above a wheel axis and that the additional limitations added to claim 2 did not exist in the prior art cited on the last Office Action.

The Examiner does not understand Applicant's "reasoning" relative to the novelty of the added limitations of claim 2. Miller, for example, clearly, in the Examiner's opinion, teaches a handle (20) that is both above and parallel to a wheel axis that "goes through" the wheel axles of both wheels. Note that Miller was used in both this and the previous Office Action as a basis for a 102 rejection.

Conclusion

11. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 9:00 to 5:30.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 3-1-5
BRYAN FISCHMANN
PRIMARY EXAMINER